

No. 1998-34

## AN ACT

SB 492

Providing for real estate broker liens in the amount of compensation due for services rendered by the broker in connection with certain real estate transactions.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

**Section 1. Short title.**

This act shall be known and may be cited as the Commercial Real Estate Broker Lien Act.

**Section 2. Definitions.**

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Broker.” A person who is licensed under the laws of this Commonwealth to act as a real estate broker.

“Commercial real estate.” Any real estate other than:

(1) Real estate containing one to four residential units.

(2) Real estate that is zoned for agricultural purposes and that is not subject to an agreement of sale contingent upon the rezoning of all or any portion of the real estate to provide for nonagricultural uses.

The term does not include single-family residential units or building lots such as condominiums, townhouses or homes in a subdivision when sold, leased or otherwise conveyed on a unit-by-unit basis even though these units may be part of a larger building or parcel of real estate containing more than four residential units.

**Section 3. Right to lien.**

Each broker, unless employed by another broker, shall have a lien in the amount of the compensation agreed upon by and between the broker and the broker's client upon commercial real estate or any interest in that commercial real estate:

(1) listed with the broker under the terms of a written agreement for the purposes of selling, leasing or otherwise conveying any interest in the commercial real estate that is signed by the owner or the owner's agent and as to which the broker or broker's employees or independent contractors have provided licensed services that result during the term of the written agreement in the procurement of a person or entity that is ready, willing and able to purchase, lease or otherwise accept a conveyance of the commercial real estate or any interest in the commercial real estate upon terms that are provided in a written agreement that is

signed by the owner or the owner's agent or which are otherwise acceptable to the owner or the owner's agent as evidenced by a written agreement that is signed by the owner or the owner's agent; or

(2) when a broker, pursuant to a written agreement with a prospective buyer to represent the buyer as to the purchase or other conveyance to the buyer of commercial real estate, becomes entitled to compensation. In the case of a tenant represented by a broker or other representative where the fee or commission is to be paid by the current owner, the right to file a lien shall be conditioned upon the owner agreeing in writing to pay the fee or commission of the broker or other representative of the tenant.

#### Section 4. Excessive curtilage.

Where a party objects that a lien has been claimed against more commercial real estate than should justly be included therein, the court upon petition may, after hearing by deposition or otherwise, limit the boundaries of commercial real estate subject to the lien. Failure to raise this objection shall not be a waiver of the right to plead the same as a defense thereafter.

#### Section 5. Lien not allowed in certain cases.

No lien shall be allowed in favor of any person other than a broker as defined herein even though such person furnishes labor or materials which result in the procurement of a person or entity who is ready, willing and able to purchase, lease or accept a conveyance of the commercial real estate or any interest in the commercial real estate.

#### Section 6. Attachment of lien.

(a) Time and manner of attachment.—A lien under section 3 shall attach to the commercial real estate or any interest in the commercial real estate upon:

(1) the broker procuring a person or entity that is ready, willing and able to purchase, lease or otherwise accept a conveyance of the commercial real estate upon the terms set forth in the written agreement with the owner or that is otherwise acceptable to the owner or the owner's agent or the broker being otherwise entitled to a fee or commission under a written agreement that is signed by the owner or the owner's agent; and

(2) except as provided in subsection (b), (c) or (d), the broker recording a notice of lien in the office of the prothonotary in the county in which the real property or any interest in the real property is located prior to the actual conveyance or transfer of the commercial real estate against which the broker is claiming a lien.

(b) Leases.—In the case of a lease, the notice of lien shall be recorded within 90 days of a default by the owner or successors in interest under the terms of the compensation agreement.

(c) Written agreements.—If a broker has a written agreement with a prospective buyer as provided in section 3(2), the lien shall attach upon the recording of a notice of lien by the broker in the office of the prothonotary of the county in which the real property or any interest in the real property

is located within 90 days after the purchase or other conveyance or transfer to the buyer.

(d) Commercial real estate in more than one county.—Where the commercial real estate is located in more than one county, the lien may be filed in any one or more of the said counties but shall be effective only as to the part of the commercial real estate in the county in which it has been filed.

(e) Owner notification.—The broker shall mail a copy of the notice of lien to the owner of the commercial real estate by certified mail.

(f) Recording.—A broker shall not be entitled to record a notice of or claim for lien unless, not later than three days prior to the date of conveyance, he gives written notice of the claim for lien to the owner and the prospective buyer that he is entitled to compensation under the terms set forth in the written contract and intends to claim a lien on the commercial real property. The notice shall be served upon the owner and prospective buyer by registered or certified mail. When there are two or more owners or two or more prospective buyers, the notice shall be served upon each owner and each prospective buyer. The notice shall include a statement of the buyer's right to deposit funds in escrow under section 10.

(g) Lien unenforceable.—The broker's lien shall be void and unenforceable if recording does not occur at the time and in the manner required by this section.

(h) Satisfaction of the lien.—In the event a lien is recorded upon the procurement of a person or entity that is ready, willing and able to purchase, lease or otherwise accept a conveyance of commercial property and the conveyance fails to occur through no fault or condition of the owner, the lien recorded by the broker pursuant to this section shall be satisfied of record by the broker, whereupon the property shall be freed and discharged from such lien. If the broker does not voluntarily satisfy the lien, the owner may demand the filing of a complaint pursuant to section 8(f) or commence an action against the broker seeking as relief the satisfaction or striking of the lien. Upon finding that the lien was recorded in bad faith or the refusal to satisfy the lien was in bad faith, a court shall award the owner the amount of the reasonable expenses, including attorney fees and court costs, incurred by the owner as a result of the recording of the lien or refusal to satisfy the lien.

Section 7. Notice of lien.

The notice of lien shall state the name of the claimant, the name of the owner, a description of the property upon which the lien is being claimed, the amount for which the lien is claimed and the real estate license number of the broker and shall be signed and verified by the broker or by a person who is authorized to sign on behalf of the broker and shall be verified.

Section 8. Enforcement of lien.

(a) Commencement of proceedings.—A broker may bring suit to enforce the lien in the court of common pleas in the county where the lien is filed by filing a complaint as set forth under subsection (e).

(b) Commercial real estate in more than one county.—Where a claim has been filed in more than one county as provided by section 6(d), proceedings to obtain judgment upon all the claims may be commenced in any of the counties, and the judgment shall be res adjudicata as to the merits of the claims properly filed in other counties. The judgment may be transferred to such other county by filing of record a certified copy of the docket entries in the action and a certification of the judgment and amount, if any. The prothonotary of the court to which the judgment has been transferred shall forthwith index it upon the judgment index.

(c) Time limitations.—The broker claiming a lien shall, except as set forth under subsection (d), within two years after recording the lien, commence proceedings to enforce the lien. Failure to commence proceedings within two years after recording the lien shall extinguish the lien.

(d) Lien based on option to purchase.—A broker claiming a lien based upon an option to purchase shall, within six months after the transfer or conveyance of the commercial real estate pursuant to the exercise of the option to purchase, commence proceedings to enforce the lien. Failure to commence proceedings within this time shall extinguish the lien.

(e) Complaint and defendants to the action.—A complaint under this section shall contain a brief statement of the contract or agreement on which the lien is founded, the date when the contract or agreement was made, a description of the services performed, the amount due and unpaid and a description of the property that is subject to the lien. The plaintiff shall make all interested parties, of whose interest he is notified or has knowledge, defendants to the action. The practice and procedure shall be governed by the Pennsylvania Rules of Civil Procedure and all other rules and procedures relating to civil actions except to the extent inconsistent with the provisions of this section.

(f) Praecept of the owner.—The prothonotary, upon praecipe of the owner, shall enter a rule upon the person claiming the lien to file a complaint. If a complaint is not filed within 20 days after service of the rule, upon praecipe of the owner of the property the lien shall be extinguished.

(g) Satisfaction or release.—Whenever a claim for lien which has been filed with the prothonotary is paid, the claimant shall mark the docket satisfied within 30 days of receipt of payment.

(h) Costs.—The cost of proceedings, including reasonable attorney fees and prejudgment interest due to the prevailing party, shall be borne by the nonprevailing party or parties. If more than one party is responsible for the costs, fees and prejudgment interest, the costs, fees and prejudgment interest shall be equitably apportioned by the court among the responsible parties.

Section 9. Priority.

The priority of a broker's lien shall be as set forth under 42 Pa.C.S. § 8141 (relating to time from which liens have priority), except that mortgages, mechanics liens and defeasible deeds in the nature of a mortgage shall have priority over a broker's lien, regardless of the date recorded.

**Section 10. Escrow of disputed amounts.**

Except as otherwise provided in this section, whenever a claim for lien has been filed with the prothonotary that would prevent the closing of a transaction or conveyance, an escrow account shall be established from the proceeds from the transaction or conveyance in an amount that is sufficient to release the claim for lien. The requirement to establish an escrow account shall not be cause for any party to refuse to close the transaction. These moneys shall be held in escrow until the parties' rights to the escrowed moneys have been determined by written agreement of the parties, a court of law or other process as may be agreed to by the parties. Upon funds in the amount of the claimed lien being escrowed, a release of the claim for lien shall be provided by the broker who is claiming the lien. The parties are not required to follow this escrow procedure if alternative procedures which would allow the transaction to close are available and are acceptable to the broker in the transaction.

**Section 11. Waiver prohibited.**

(a) General rule.—Except as provided in subsection (b), an agreement to waive the right to a lien under this act made contemporaneously with the signing of the listing agreement, whether dated on the date of the listing agreement or thereafter, shall be void and unenforceable.

(b) Discharge of lien.—Any lien filed hereunder shall, upon petition of the party subject to the broker's lien or any party in interest, be discharged as a lien against the commercial real estate whenever a sum equal to the amount of the putative lien against the commercial real estate shall have been deposited with the court in said proceedings for application to the payment of the amount finally determined to be due.

(c) Refund of access.—Any excess of funds paid into court as aforesaid over the amount of the claim determined to be paid therefrom shall be refunded to the party depositing same upon application for a refund.

(d) Security in lieu of cash.—In lieu of the deposit of any sum or sums, approved security may be entered in such proceedings in double the amount of the required deposit or in such lesser amount as the court shall approve which, however, shall in no event be less than the full amount of such required deposit, and the entry of such security shall entitle a party to have the broker's lien discharged to the same effect as though the required sums had been deposited in the court aforesaid.

(e) Authority of court.—The court, upon petition filed by any party and after notice and hearing, may upon cause shown:

- (1) require the increase or decrease of any deposit or security;
- (2) strike off security improperly filed; and
- (3) permit the substitution of security and enter an exoneration of security already given.

**Section 12. Revival of judgment.**

Judgment upon a claim shall be revived within each recurring five-year period. The practice and procedures to revive judgment shall be governed by

42 Pa.C.S. § 5526 (relating to five year limitation) and the Pennsylvania Rules of Civil Procedure.

**Section 13. Severability.**

The provisions of this act are severable. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application.

**Section 14. Effective date.**

This act shall take effect in 60 days.

APPROVED—The 20th day of March, A.D. 1998.

THOMAS J. RIDGE